

**REMARKS**

Claims 1, 4, 6-8 and 19 remain in the application. Claims 2, 3, 5 have been canceled. Claims 9-18 and 20-22 have been withdrawn. Claims 23-27 have been added.

New claims 23-25 recite preferred embodiments of the invention which correspond to original claims 20-22. New claims 26 and 27 relate to the use of the plants encompassed by claim 1. Support for these claims is found at page 4, lines 10-22

Accordingly, no new matter is added by these amendments to the claims.

**I. Restriction Requirement**

Applicant acknowledges the finality of the restriction requirement and reserves the right to present claims 9-18 and 20-22 in a divisional application(s).

**II. Information Disclosure Statement**

Applicant encloses herewith a Invention Disclosure Statement (IDS) that provides information missing on the IDS filed March 22, 2004.

**III. Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph**

Applicant respectfully submits that the amendments to the claims render the grounds of rejection moot. In particular, the term "biological agent" in claim 19 has been amended to "insecticidal biological agent." This term is known in the art to encompass all types of biological agents such as bacteria, fungi and viruses, for example, that are detrimental to insects.

**IV. Rejection of Claims Under 35 U.S.C. § 112, First Paragraph**

Applicant acknowledges the Examiner's admission that the specification provides an enabling disclosure of plants transformed with a nucleotide sequence encoding an insect viral

fusolin or fusolin-like protein. The specification also provides an enabling disclosure of the use of such plants to inhibit the feeding, growth or development of insects as set forth in new claims 23-27.

It is respectfully submitted that the claims, as amended above are enabled by the specification. Accordingly, the rejection of claims 1-8 and 19 under 35 U.S.C. § 112, first paragraph is respectfully traversed.

**V. Rejection of Claims Under 35 U.S.C. § 102(b)**

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by bt Lebourgne-Castel et al, as evidenced by Lai-Fook *et al.* The Examiner states that Lebourgne-Castel teaches transgenic plants overexpressing BiP.

It is respectfully submitted that amendments to the claims render this ground of rejection moot. Accordingly, the rejection of claims 1 and 2 under 35 U.S.C. § 102(b) are the cited prior art is respectfully traversed.

**VI. Rejection of Claims Under 35 U.S.C. § 103(a) Over Lebourgne-Castel and Adang**

Claims 1, 2, 7, and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentably obvious over Lebourgne-Castel in view of Adang *et al.* Lebourgne-Castel is relied on as teaching transgenic plants overexpressing BiP, but does not teach or suggest other exogenous toxins or agents that are deleterious to plants. The Examiner states that Adang teaches increased insect resistance of plants expressing the *B. thuringiensis* cry-IIIa delta-endotoxin. The Examiner concludes, therefore, that it would have been obvious to one of ordinary skill in the art to express the coding sequence taught by Adang in plants taught by Lebourgne-Castel for the purpose of achieving increased insect resistance.

This rejection is respectfully traversed as follows. Neither cited reference discloses or suggests expression of fusolin or fusolin-like proteins in plants to enhance insect resistance. Accordingly, the rejection of claims 1, 2, 7 and 8 under 35 U.S.C. § 103(a) over Lebourgne-Castel in view of Adang *et al.* is respectfully traversed.

**VII. Rejection of Claims Under 35 U.S.C. § 103(a) Over Lebourgne-Castel and Colliot *et al.***

Claims 1, 2 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentably obvious over Lebourgne-Castel in combination with Colliot *et al.* The Examiner relies on Lebourgne-Castel as above, and admits that this reference does not teach insecticidal chemicals. Colliot is relied on as teaching the application of insecticidal agents to plants. The Examiner concludes, therefore, that it would have been obvious to one of skill in the art to apply the insecticidal agent taught by Colliot to the plants taught by Lebourgne-Castel.

This rejection is traversed as follows. As noted by the Examiner, the teachings of Lebourgne-Castel are limited to overexpression of BiP in plants. This reference does not teach or suggest overexpression of fusolin and does not teach the effects of fusolin and fusolin-like proteins on the growth and development of insects. Consequently, the combined art does not suggest transformation of plants with a fusolin or fusolin-like gene to alter the growth and development of insects such that the effects of chemical or biological insecticides that are applied to the transgenic plants are enhanced.

Accordingly, the rejection of claims 1, 2, and 19 under 35 U.S.C. § 103(a) over the combined prior art is respectfully traversed.


It is believed that the above represents a complete response to the official action and reconsideration is requested.

Serial No.: 09/936,216

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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